

APPENDIX A

COURT ORDER/STATEMENT OF DECISION

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COUNTY COUNSEL'S OFFICE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

CITY OF LAKE FOREST; CITY OF ) CASE NO. 77-24-42

IRVINE )

Petitioners/Plaintiffs )

vs. )

STATEMENT "011"

OF DECISION *MD*

COUNTY OF ORANGE, et.al. )

C.C.P. Section 632

Respondents/Defendants )

STATEMENT OF THE CASE

Petitioners City of Lake Forest and City of Irvine bring this action seeking a writ of mandate to vacate the certification by Respondent County of Orange of EIR 564 relating to the Musick Jail site expansion.

The Notice of Preparation [hereafter NOP] specified that the project included expansion of the current Musick Honor Farm jail site currently rated for 713 beds (AR 4:1747) (currently housing on an overcrowded basis approximately 1200 inmates (AR 4:1987)) to a jail facility accommodating all classes of prisoners (minimum, medium, maximum, medical) with a rated capacity of 7,572 inmates, with a worst case scenario of 7,680 inmates. (AR 4:1993) Although 7,572 is the number of beds that need to be

1 built at Musick to meet the County's Year 2006 Omni projections, (AR 4:1742) the  
2 project is stated to be construction of a jail facility with a rated capacity of 7,584 beds  
3 (AR 4:1751).

4 Petitioners City of Lake Forest and City of Irvine's corporate city limits abut the  
5 Musick site; Lake forest generally easterly of the project and Irvine generally southerly.  
6 Residences in the City of Lake Forest exist, across Bake Parkway, about 700 feet  
7 from the perimeter of the Musick site. On the north-eastern part of the City of Irvine,  
8 abutting the Musick site, there is a complex of commercial and industrial buildings  
9 which have been built subsequent to the location of the County honor farm at the  
10 Musick site. The nearest residences in the City of Irvine are several miles away.

11 Petitioners are unalterably opposed to the adoption of the proposed project  
12 which would increase the population of the Musick site by five to ten-fold, and,  
13 perhaps more importantly, would change the character of the inmate population to  
14 include maximum security prisoners.

15 Respondent, on the other hand, is committed to building the project to alleviate  
16 some of the severe overcrowding conditions which exist in Orange County jails,  
17 resulting in court supervised incarceration procedures (Stewart v. Gates) which  
18 requires early release of inmates (AR 4:1744) and other measures. The County is  
19 pursuing both short term and long term strategies. However, in the context of jail  
20 construction and the inevitable resistance experienced, "short-term" may be three to  
21 ten years, and adopt a truly Carrollian aspect.

## 22 STATEMENT OF ISSUES

23 EIR 564 contained a matrix similar to that envisioned by CEQA Guidelines  
24 Section 15063. (AR 4:1735-1737) It sets forth fourteen separate categories of  
25 potential impacts of the project. Petitioners contend that Respondent failed the legal  
26 standard in all but three, and as to one of those three, Light and Glare, they argued  
27 this impact as being inadequately treated, even though it was not included in their  
28 pleadings. Of the two remaining, Hydrology consists of possible surface water runoff,

1 and is addressed in the Alton Parkway Project EIR. The other, Project Construction  
2 Effects, is temporary, and is not challenged by Petitioners.

3 The Orange County Board of Supervisors, on November 5, 1996, adopted the  
4 findings for the Musick Jail Site and certified EIR 564. In doing so, they adopted 52  
5 "Mitigation Measures", of which 23 pertained solely to construction activities, and were  
6 therefore temporary. Of the remaining 29, some were substantive, and some required  
7 evaluations, notifications or agreements with other agencies.

8 Petitioners submitted a Statement of Issues, which alleges violation by  
9 Respondent of CEQA in 27 specifications, violation of the Public Utilities Code for  
10 failure to refer the project to the Orange County Airport Land Use Commission, and  
11 violation of the Government Code and other "...state law..." for failure to comply with  
12 zoning laws.

13 Respondents replied, contravening each of Petitioners' issues, and setting forth  
14 at items D. through P. further issues, which are deemed denied by Petitioners.

15 Petitioners' Statement of Issues was dated August 29, 1997, and filed by Mr.  
16 Caldwell, later joined in by Mr. Kuperberg. Respondent's Statement of Issues was  
17 dated September 9, 1997. Both of those statements are incorporated herein by this  
18 reference, without restatement *in haec verba*.

### 19 ORGANIZATION OF THIS STATEMENT OF DECISION

20 Even though Petitioners' Issues are severally stated, some are repetitive (2.,  
21 "impacts", 3. "potentially significant impacts", 15., "long term implications", 16.,  
22 cumulative impacts, and 17., "significant unavoidable adverse environmental  
23 impacts"; 2., "alternatives", 18., "alternatives", and by implication 20., failing to  
24 "disclose the extent to which the Project will satisfy the stated Project objectives), and  
25 others, such as inadequate incorporation by reference are not severable issues  
26 themselves, but may weigh on the adequacy of the disclosure of other issues as  
27 required by CEQA.  
28

1 The court is mindful of each of the stated issues of the parties. Except as  
2 specifically set forth herein, the Petition for Writ of Mandate is denied as to the stated  
3 issues.

#### 4 DISCUSSION

5 **1. EIR 564 contains an inaccurate Project description. (Petitioners' I, 1.;**  
6 **Respondent's A.1.)**

7 Petitioners contend that the Project description is inadequate on two bases.  
8 First, that since the Orange County Sheriff-Coroner applied to the Federal government  
9 for transfer of 39 acres for agricultural and future jail expansion (AR 2:808-818), the  
10 true project is not as stated by Respondent, i.e. for a 7,584 bed facility, but for  
11 something even larger. (The context of the 39 acre parcel will be discussed under  
12 'agriculture'.) Second, the specification of 7,584 beds with a worst case scenario of  
13 7,968 (AR 4:1728) understates the project because the county once contemplated  
14 9,312 for the inmate population (AR 6:4344), and so that should be the number used  
15 in the EIR for determining impacts.

16 The contention is puzzling. Respondent is the proponent of the Project which  
17 will be constructed and owned by Respondent. Respondent says the Project is to be  
18 constructed on the existing 100 acres of the Musick site, which does not include the  
19 39 acres of "reconveyance property". The fact that the County does not yet have  
20 specific plans for the Project is immaterial. In this case it is undisputed that  
21 Respondent is the Lead Agency, and can and must describe its own Project. CEQA  
22 Guidelines, Sec. 15063(d)(1). If they certify an EIR for one Project, and attempt to  
23 build a significantly larger one, or one someplace else, they are out of compliance with  
24 CEQA and subject to restraint.

25 Unless and until that happens, the Project as described in EIR 564 is  
26 adequately described. The Petition for Writ of Mandate on these grounds is denied.

27 **2. Failure to address and analyze alternatives to the Project. (Petitioners' I.2.,**  
28 **Respondent's A.2.)**

1 Chapter 7 of EIR 564 (AR 4:1911-1937) contains Respondent's analysis of  
2 alternative measures. It even discusses the No Project alternative, although it is  
3 difficult to understand how that is germane in the context of a twenty year old Federal  
4 Court order to abate overcrowding and a situation that is growing worse by the day.

5 Petitioners claim that Respondent's reliance on timing considerations in  
6 rejecting alternatives "...is belied by statements contained in the document itself."  
7 (City of Lake Forest, Opening Brief p. 39:3-4) They go on to suggest that  
8 Respondent's disinclination to cease development of the Musick site until a complete  
9 jail site study can be conducted for all possible sites in the county is not supportable  
10 because the proposed Project will "...not actually be available to meet the County's  
11 need for new prison beds in the near-term future." (*op.cit.* at lines 8-9) In the context  
12 of jail siting/construction with the inevitable litigation/ referenda and other factors of  
13 delay, "near-term" may be another of those Carrollian meanings. In any event, it is  
14 almost certainly a relative term.

15 At the court hearing, in response to the Court's question, Petitioners affirmed  
16 their position that a proponent of a Project is required to conduct a "mini-EIR" for each  
17 of the discussed alternatives, and then select the proposed project only if the  
18 environmental impact of it is less than any other possible project, or, in the alternative,  
19 the County passes a resolution of overriding concern to authorize the proposed  
20 project. No citation of authority for that contention was provided, and the contention is  
21 rejected.

22 The Court finds that Chapter 7 of EIR 564, which sets forth significant  
23 information about the County's long search for jail alternatives, including but not  
24 limited to the Final Report of the 1994-95 Grand Jury, constitutes "...sufficient detail to  
25 serve the informational purpose of the report to the governmental body which will act  
26 and the public which will respond to the action through the political process." City of  
27 Ranch Palos Verdes v. City Council, 59 Cal.App.3d 869 @ 892.  
28

1 The Petition for Writ of Mandate on the grounds of inadequate discussion of  
2 alternatives is denied.

3 3. Failing to disclose the Project's impacts on agricultural land. (Petitioners' I.4.,  
4 Respondent's A.4.)

5 Petitioners contend that EIR 564 fails to adequately discuss the impact of the  
6 project related to the loss of prime agricultural land. The Musick site is approximately  
7 100 acres, most of which is currently devoted to agricultural pursuits. The honor farm  
8 inmates provide the labor for the agricultural activities. It is undisputed that the projec  
9 contemplated by EIR 564 will reduce the amount of prime agricultural land in the area  
10 and in Orange County by about 33 acres on the Musick site, which will be partially  
11 offset by the addition of 12 acres of the "reconveyance" property not presently being  
12 tilled. The net loss of prime agricultural land is 21 acres. AR 4:1938

13 The loss of agricultural land is mentioned only peripherally in EIR 564 (AR  
14 4:1780, 1938), is not indexed as a separate item (AR 4:1717-1722), and is not  
15 mentioned in the matrix (AR 4:1735-1737).

16 Respondent, in its Opposition to Opening Trial Brief of City of Lake Forest,  
17 contends that "B. The CEQA Guidelines Do Not Require a finding of Significant  
18 Impacts To Agricultural Land" (p. 12, lines 13-14) and then goes on to say that  
19 "Therefore, far from not finding the impact to agricultural lands insignificant, the  
20 County found that it was significant [citations omitted], had been acknowledged and  
21 overridden in a prior EIR [citations omitted], and that the County also acknowledged  
22 that the conveyance parcels augmenting the agricultural operations acted as  
23 mitigation.

24 If those findings are in EIR 564, the Court could not find them. However, at the  
25 hearing the County made its position clear. Counsel stated that: (1) EIR 447 (which  
26 was for a different project at the Musick site which would have eliminated all  
27 agricultural uses) set forth that the loss of the prime agricultural land was a significant  
28 impact; (2) upon the certification of EIR 447 the Board of Supervisors made a

1 statement of overriding concern, justifying the loss of the agricultural land; (3) the  
2 County is entitled to rely on the prior statement of overriding concern under CEQA  
3 Sec. 21081(b) issued by the Board of Supervisors; and (4) since this project will  
4 consume less agricultural land than the other proposed project (which was never  
5 built), 1986 finding of overriding concern establishes the baseline agricultural usage of  
6 the Musick site at zero, and therefore the proposed loss of de facto agricultural land  
7 (which they seem to be arguing is not contemplated by the law to exist [see (3)  
8 above]) is an insignificant impact.

9 Respondent admits that the loss of prime agricultural land, generally, is a  
10 significant impact, and in fact its loss was found to be a significant impact in EIR 447.  
11 They go on to contend that they may ignore those facts based on the argument above  
12 and CEQA Sec. 21166. (AR 4:1780)

13 The Court disagrees with that argument and that interpretation. CEQA Sec.  
14 21166 reads in part: "When an environmental impact report has been prepared for a  
15 project pursuant to this division, no subsequent or supplemental environmental impact  
16 report shall be required...". Reliance on that section is inapposite. No authority was  
17 cited for the proposition that an adoption of a statement of overriding concern under  
18 CEQA 21081(b) "grandfathers" that piece of property with respect to that impact for all  
19 time, so a later, different project, which has a similar impact on the then use of the  
20 property is deemed insignificant.

21 The impact resulting from the loss of prime agricultural land, found by the lead  
22 agency in 1986 to be significant, is not insignificant in 1997. EIR 564 is insufficient in  
23 its treatment of the loss of agricultural land. The Petition for Writ of Mandate is  
24 granted on the ground that EIR 564 fails to adequately disclose the Project's impact  
25 on agricultural land.

26 **4. Failing to adequately disclose the Projects air quality impacts**  
27  
28



1 EIR 564, Section 5.2.b. discusses air quality management as it relates to the  
2 Project. Thresholds of Significance for the SCAQMD are set forth at Table 11. (AR  
3 4:1790)

4 The discussion establishes that the Project impacts fall within the tolerance  
5 limits set by SCAQMD with the exceptions of Particulates (PM10) during construction  
6 (Table 9, AR 4:1788) and NOx once the Project is on line. Twenty-eight mitigation  
7 measures are recommended, nineteen of which relate to construction activities, and  
8 seven which pertain to ongoing environmental conditions.

9 The only acknowledgment of the excessive NOx emissions is found at Table 11  
10 that calculates "Project Emissions as a Percent of Regional (County) Emissions as  
11 0.047%. It does not discuss how that relates to other possible projects, or other uses  
12 of properties within the County. It subsequently concludes at AR 4:1795 that  
13 "Following implementation of the recommended mitigation, all impacts would be  
14 reduced to a level of insignificance.". It does not explain how that conclusion is  
15 reached. It does not say whether the recommended mitigation measures will have the  
16 effect of reducing NOx emissions or not, and if so, to what extent. It simply seems to  
17 be saying that, since it will be contributing only a small amount to the total County NOx  
18 emissions, the fact that the Project emissions will exceed the SCAQMD's thresholds of  
19 significance by a factor of 3 is insignificant.

20 That does not comply with CEQA. Kings County Farm Bureau et.al. v. City of  
21 Hanford (1990) 221 Cal.App.3d 692.

22 The Respondent's own consultant stated that "...the long term NOx emissions  
23 due to the proposed project will be above the SCAQMD significant threshold, and  
24 therefore, the project is considered to have a regional air quality impact. With the  
25 recommended mitigation measures above, the proposed project will reduce emissions  
26 to an extent, but the emissions, specifically NOx levels, **would still be significant.**"  
27 (emphasis added) (AR 4:2257)  
28

1           The Petition for a Writ of Mandate is **granted** for failure to adequately disclose  
2 the Project's air quality impacts.

3 **5. Failure to adequately disclose the Project's aesthetic impacts**

4           Section 5.4 of EIR 564 discusses the aesthetic impacts. The discussion is  
5 cursory at best. It is three pages of text, followed by some photographs establishing  
6 that there are nearby locations in the Cities of Irvine and Lake Forest from which the  
7 site cannot be viewed, and a series of cross section diagrams. The apparent  
8 conclusion to be drawn from the diagrams is that the visual impact of the jail buildings  
9 will be mitigated for the residents of Serrano Park by intervening buildings that do not  
10 presently exist, are not presently being proposed to be built, and which could have  
11 heights that exceed current zoning limitations.

12           Even with the lack of precision demonstrated by the exhibits, the mitigation  
13 measures 31 to 33 speak to the aesthetic impacts of the project. The buildings are to  
14 be designed to have an office appearance, consistent with the surrounding industrial  
15 and commercial area of the City of Irvine. Landscaping will be required to provide  
16 visual buffering, consistent with security practices. A wall will be constructed adjacent  
17 to Alton Parkway that will prevent the Project being seen by travelers on the roadway.  
18 Notwithstanding the "boot-strap" nature of the exhibits, the conclusion of insignificance  
19 is supported by the recommended mitigation measures which were adopted upon the  
20 certification of EIR 564 by the Board of Supervisors, and thus constitute substantial  
21 evidence supporting this finding.

22           The Petition for a Writ of Mandate on the ground of failure to disclose aesthetic  
23 impacts is **denied**.

24 **6. Failure to adequately disclose noise impacts.**

25           This contention, like many others of Petitioners, should not have been made.  
26 EIR 564 establishes recommended mitigation measures during the construction  
27 phase. The long term noise impact with the Project on line is <0.3dBA. Human  
28 perception of a change in noise level begins at 1.0dBA. (AR 4:1817)

1           The noise impact of the Project is insignificant as a matter of law, and the  
2       Petition for a Writ of Mandate on this ground is denied.

3       **7. Failure to adequately disclose biological resources impacts.**

4           EIR 564 deals with this subject in a succinct manner. There are no biological  
5       resources impacts on the Musick site because there are no biological resources. The  
6       possibility of a wetland site on one corner of the property which is not currently  
7       recognized to exist will be cleared with the California Department of Fish and Game  
8       before construction. The mitigation measure adopting that approach is sufficient.

9           The Petition for a Writ of Mandate on this ground is denied.

10       **8. Failure to adequately disclose the Project's consistency with land use and**  
11       **relevant planning.**

12           The proposed Project is consistent with the Orange County Land Use Element  
13       of its General Plan. The property in question, zoned A-1, would not permit the  
14       proposed use. The Board of Supervisors adopted Resolution 96-811 (AR 1:48-50)  
15       exempting the County from its own zoning ordinances with respect to this project.  
16       Reference to that process is found in EIR 564. (AR 4:1831)

17           Further, since Orange County does not have an agreement pursuant to Public  
18       Utilities Code Section 21676:5(b), they were not required to submit the de facto zoning  
19       change to the Airport Land Use Commission.

20           The Petition for a Writ of Mandate on this ground is denied.

21       **9. Failure to adequately disclose the Project's public safety aspects.**

22           Petitioner contends that a showing (AR 2:790) that 33 persons who had been  
23       incarcerated at the Musick Honor Farm were re-arrested at some time after 48 hours  
24       after their release is evidence of a public safety problem pertaining to the proposed  
25       Project. In fact, they go on and say that "...it is inevitable that the situation will be  
26       much worse if the Musick facility is dramatically expanded and begins to house  
27       maximum security inmates." (Lake Forest Opening Brief 27:17-19), without any factual  
28       reference to support the statement.

1 It would be preferable had the Respondent not made a similar unsubstantiated  
2 statement (AR 2:926), but saying it doesn't make it so.

3 It is not unexpected that persons who are incarcerated may be arrested at  
4 some time after their release from jail. Usually it is because some new offense has  
5 taken place, and they are suspected of it. No showing has been made that any of the  
6 re-arrests were causally related to the persons' incarceration at Musick or their release  
7 therefrom.

8 Further, the numbers, 33 out of 16,107 persons released, establish  
9 insignificance as a matter of law.

10 The discussion of the management of disturbed juveniles at the Interim Care  
11 Facility establishes that any impact from their presence would be insignificant. (AR  
12 4:1853)

13 The Petition for a Writ of Mandate on this ground is denied.

14 **10. Failure to adequately disclose the Project's transportation, circulation and**  
15 **parking impacts.**

16 Section 5.10 (AR 4:1855-1892) discusses these issues with charts, tables, and  
17 sets forth mitigation measures appropriate to the impacts. There is no merit to the  
18 allegation of inadequate disclosure.

19 The Petition for a Writ of Mandate on this ground is denied.

20 **11. Failure to adequately disclose the Project's socioeconomic impacts.**

21 Petitioner contends that Respondent relies on "...a completely inadequate  
22 economic study featuring the same deficiencies that led the court to reject the  
23 County's conclusion that the socioeconomic impacts of the proposed Katella-Douglass  
24 facility would not result in physical changes to the surrounding neighborhood. That  
25 contention is not supported by the administrative record.

26 Judge Owen's decision rested on the County's reliance on a research article  
27 which was "...irrelevant to the Project site and does not justify County in making no  
28 effort to obtain any evidence relevant to that site." (emphasis added) (AR 2:949)

1 Contrasted is this case, where the Tarantello report was included as an  
2 appendix to EIR 564. (AR 4:2431-2504) It is clear that White disagrees with  
3 Tarantello's methodology. That does not deprive Tarantello's report of status as  
4 substantial evidence. Greenebaum v. City of Los Angeles (1984) 153 Cal.App.3d 391

5 The Petition for a Writ of Mandate on this ground is denied.

6 **12. Failure to adequately disclose the Project's public services and facilities**  
7 **impacts.**

8 EIR 564 acknowledges the City of Lake Forest's claim that added law  
9 enforcement resulting from the Project will require the hiring of one sergeant and five  
10 patrol officers. (AR 4:1899)

11 Respondent argues in its brief that the Orange County Fire Authority denied  
12 any significant impact from the Project (Respondent's Reply Brief to City of Lake  
13 Forest 14:24-28). It ignores, however, the response of OCFA stating at paragraphs 6.  
14 and 7. that the increase in inmate population will increase the demand for emergency  
15 medical services and require additional staff and facilities. (AR 4:2178)

16 EIR 564 goes on to conclude that its one mitigation measure, to co-ordinate  
17 with Southern California Gas, Southern California Edison, Pacific Bell and Irvine  
18 Ranch Water District renders these impacts insignificant. The logical nexus is not  
19 apparent.

20 The Petition for a Writ of Mandate on this ground is granted.

21 **13. Failure to adequately disclose the Project's cumulative impacts.**

22 It is perhaps appropriate that this issue is No. 13.

23 First, the discussion of cumulative impacts consists of one page. It discusses  
24 only the relation to the El Toro Reuse Plan and the agricultural impacts. In both  
25 cases, it makes the argument that this Project, in relation to all others, is so small as to  
26 have no significant cumulative impact. This invoking of the "ratio" concept as justifying  
27 a cursory examination of the cumulative impacts has been rejected. Kings County  
28 Farm Bureau et.al. v. City of Hanford (1990) 221 Cal.App.3d 692.

1 Further, Respondent relies on an incorporation by reference of the El Toro  
2 Reuse Plan EIR, which was still not final at the time of the incorporation. Petitioner  
3 argues invalidity of such an incorporation of an EIR which is not final, but there is no  
4 defect on that basis. However, if one is going to rely on such an incorporation, the  
5 premise upon which the incorporated information rests must be viable.

6 In this case, this Court has judicially noticed the ruling of Judge McConnell in El  
7 Toro Reuse Planning Authority, et.al. v. County of Orange, et.al., Orange County  
8 Superior Court No. SC 710121. That ruling read, in part, at paragraph 2., with respect  
9 to baseline measurements, "...to the extent Respondent's comparison with anticipated  
10 future conditions is based on unconstrained demand it is inappropriate because it is  
11 unrealistic and has the effect of artificially minimizing the proposed project's  
12 environmental impacts." The Court granted the Petition for a Writ of Mandate on the  
13 basis of the invalidity of the comparisons made.

14 Since the baseline and projected use data incorporated in EIR 564 has been  
15 invalidated, comparisons of relative insignificance are similarly tainted. No valid  
16 conclusion can be based on data of demonstrated invalidity. Upon recirculation, if the  
17 cumulative impacts to the basin are analyzed against the hypothesis of a no project  
18 and/or open space alternative for El Toro reuse and against a hypothesis of a  
19 significantly intensive project for El Toro reuse, and are found, upon substantial  
20 evidence, to be insignificant in any case, CEQA would be complied with. If, on the  
21 other hand, the cumulative impacts were found to be significant under one hypothesis,  
22 further analysis would be necessary to project probable future usage, again based on  
23 substantial evidence, against which to compare the impacts of the present project  
24 which would accumulate with the impacts of the future usage.

25 Perhaps ironically, the Court, in SC 710121 also invalidated the EIR for failing  
26 to adopt meaningful mitigation measures with respect to agricultural impacts. If that  
27 incorporated reference is invalid, the finding that the loss of agricultural property at the  
28

1 Musick site is not cumulatively significant (AR 4:1938) likewise loses its factual  
2 predicate.

3 Further, since this Court has found that EIR 564 is deficient in its discussions  
4 and disclosures relating to air quality and public services, those subjects should be  
5 treated with respect to possible cumulative impacts.

6 The Petition for a Writ of Mandate on this ground is granted.

7 **14. Failure to disclose the Project's hazardous materials impacts.**

8 Respondent has acknowledged "concerns" about possible hazardous materials,  
9 although none have been established to exist onsite other than the normal fuel tanks  
10 and agricultural residue. Whatever is there is not an impact of the Musick Jail  
11 Expansion Project. Baird v. County of Contra Costa (1995) 32 Cal.App.4<sup>th</sup> 1464

12 If, upon further evaluation or construction such materials are found, they are  
13 required to be removed in a manner consistent with State and/or Federal law. There  
14 are no other options.

15 The Petition for a Writ of Mandate on this ground is denied.

16 **15. First affirmative defense: Statute of Limitations**

17 This is an attempt to seek a rehearing of the Court's previous ruling without  
18 having complied with Code of Civil Procedure Section 1008.

19 The motion is denied.

20 **16. Motion to dismiss as to the Orange County Board of Supervisors**

21 This issue was not responded to in City of Lake Forest's Reply Brief and is  
22 considered unopposed. In any event, the County of Orange, not the Orange County  
23 Board of Supervisors, is the Lead Agency for this Project.

24 The motion is granted.

25 **17. Failure to allege a deficiency in the Petition as to Light and Glare and**  
26 **Airport Safety.**

27 The motion is granted.

28 **18. Remaining affirmative defenses.**

1 Respondent's "D." is a complaint not subject to remedy and also the issue was  
2 ruled upon in No. 1, above.

3 Respondent's "F." and "G." have been disposed of by rulings herein.

4 Respondent's "H.", "I.", and "J." have not been established by a review of the  
5 pleadings or by competent evidence. The motions are denied.

6 Respondent's "K." was taken care of by No. 16, above.

7 Respondent's "L." and "M." were taken care of by No. 15, above.

8 The remaining contentions do not require a response.

9 **19. Requested and suggested remedies**

10 Respondent's "Specification of Controverted Issues/Proposals for Issues not  
11 Covered/Requests for Clarification to Tentative Statement of Decision" does not raise  
12 any new principal controverted issues. It requests "clarification" which to some extent  
13 is a re-argument of the case, and to some extent is a request for remedial orders,  
14 including authorization to commence construction on part of the proposed project.

15 The court has revised this Statement of Decision to provide guidance in the  
16 area of cumulative impacts. Respondent cited Fort Mojave Indian Tribe v. Department  
17 of Health Services (1995) 38 Cal.App.4<sup>th</sup> as supporting the contention that the  
18 relatively small size of the proposed project in EIR 564 compared to the El Toro Reuse  
19 renders the impacts of the Musick project insignificant. The citation is confusing. In  
20 that case the court held that "...The EIR's discussion of cumulative impacts on the  
21 tortoise's habitat was also legally sufficient...." Fort Mojave Indian Tribe v. Department  
22 of Health Services, *supra*, Headnote 12.

23 By way of contrast, in this case the factual predicates upon which the  
24 conclusions were based failed, and consequently the conclusions are not based on  
25 substantial evidence. Therefore, the discussion of cumulative impacts is legally  
26 insufficient.

27 The court found EIR 564 insufficient in four respects. As to two of them, Public  
28 Services and Facilities impacts, and Air Quality impacts, there is sufficient evidence in



1 the record to support adequate findings, if such be made. The court is unaware of ar  
2 authority that holds that adding personnel, per se, is an environmental impact, as  
3 distinguished from the impacts that the activities of those personnel would have  
4 (traffic, pollution, congestion, etc.) With the small numbers of added personnel being  
5 contemplated, the findings in this category may be corrected by additional analysis  
6 and inclusion. By way of example, the added traffic contributed by 5-10 personnel  
7 would not appear to change the overall traffic flow analyses. The court does not find  
8 that recirculation of this issue will be required. CEQA Guidelines 15088.5(b)

9 Similarly, the Air Quality impacts are set forth in the administrative record.  
10 What is missing is a detail of mitigation that would render those impacts insignificant,  
11 or, alternatively, a finding of significance together with a statement of overriding  
12 concern. The court does not find that recirculation of this issue will be required. CEQA  
13 Guidelines 15088.5(b) However, the fact of significant impact on air quality, if that be  
14 found, would have to be analyzed in the discussion of cumulative impacts in the basin

15 Respondent may, but is not required, to recirculate all four issues for public  
16 comment, followed by findings and appropriate responses. With respect to the  
17 impacts to agricultural land and cumulative impacts, recirculation is required. CEQA  
18 Guidelines 15088.5(a)(4)

19 With respect to Respondent's request for authorization to commence  
20 construction of the Sheriff's substation and laundry and food preparation facilities, no  
21 authority has been cited, and the Court knows of none, that would support such an  
22 order. Both Laurel Heights Improvements Association v. Regents of the University of  
23 California (1988) 47 Cal.3d 376, and the City of Orange v. County of Orange case,  
24 (the latter of which the court concludes is being referenced only for the factual  
25 circumstance and not cited as authority), involved continuation of ongoing activities  
26 even though an EIR was found insufficient. Neither of them support the institution of  
27 new uses based on an inadequate EIR.  
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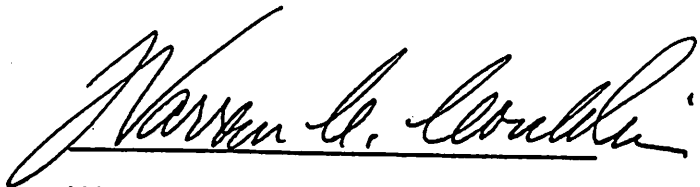
1 A process is available to Respondent if it seeks to commence construction  
2 immediately. California Public Resources Code section 21064; CEQA Guidelines  
3 15070, et.seq. The Court expresses no opinion on the possible validity of such a  
4 process.

5 The Court declines to enter an order authorizing Respondent to undertake  
6 construction activities until EIR 564 has been certified as adequate. The Court further  
7 reserves jurisdiction to rule further on Petitioners' Petition for a Writ of Mandate after  
8 the recirculation, comment, finding and declarations discussed above have been  
9 accomplished.

10 **ORDER**

11 1. Respondent shall prepare an interlocutory judgment consistent with the  
12 Court's ruling, and submit the same to Petitioners for approval as to form, and then to  
13 the Court for execution.

14 Dated: February 27, 1998

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18 Warren C. Conklin

19 Judge of the Superior Court, Assigned  
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**FILED**

ORANGE COUNTY SUPERIOR COURT

MAR 11 1998

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

ALAN SLATER, Executive Officer/ Clerk  
By J. BROWNFIELD Deputy

CITY OF LAKE FOREST; CITY OF IRVINE

Plaintiff/Petitioner

vs.

COUNTY OF ORANGE, et al.

Defendant/Respondent

Case Number 77-24-42

CERTIFICATE OF SERVICE BY MAIL OF  
STATEMENT OF DECISION

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify that I am not a party to the within action or proceeding that on March 11, 1998, I served the STATEMENT OF DECISION

on each of the parties hereinafter named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Caldwell, Leslie, Newcombe  
606 S. Olive St., # 500  
Los Angeles, CA 90014

Rutan & Tucker  
611 Anton Blvd., #1400  
Costa Mesa, CA 92626-1998

Jack W. Golden  
P.O. Box 1379  
Santa Ana, CA 92702

ALAN SLATER  
Executive Officer and Clerk of the Superior Court  
in and for the County of Orange,

Dated: 3-11-98

By: J. Brownfield

Deputy

**J. BROWNFIELD**

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RECEIVED  
MAY 12 1998  
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

CITY OF LAKE FOREST; CITY OF  
IRVINE,

Petitioners,

vs.

COUNTY OF ORANGE; ORANGE COUNTY  
BOARD OF SUPERVISORS; and  
DOES I-L, inclusive,

Respondents.

Case No. 772442

PEREMPTORY WRIT OF MANDATE

Judgment having been entered in this action, ordering that a peremptory writ of mandate  
be issued from this Court,

IT IS ORDERED THAT RESPONDENT COUNTY OF ORANGE shall, promptly upon  
service of this writ, and not later than the earliest practicable regularly scheduled meeting of the  
BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE (the "Board of Supervisors"), its  
elected legislative and governing body, SET ASIDE, VACATE and VOID each of the following  
actions:

1. Resolution No. 96-810, dated November 5, 1996, certifying Final Environmental  
Impact Report 564 ("EIR 564"), making findings of fact with respect to impacts identified in EIR 564,  
and adopting a construction and operations mitigation monitoring program for the expansion of the  
Musick Jail facility; and

1                   2.       Resolution No. 96-811, dated November 5, 1996, approving the "James A.  
2 Musick Jail Expansion and Operation, Sheriff's Southeast Substation, interim Care Facility Project."

3                   Respondent is further ORDERED AND COMMANDED AS FOLLOWS:

4                   1.       Respondent shall suspend any and all activities relating to any action or project  
5 contemplated by Resolution No. 96-810 or 96-811 of the Board of Supervisors (including, but not  
6 limited to project construction) that could directly result in any change or alternation to the physical  
7 environment until the County has complied with this Peremptory Writ of Mandate or taken other  
8 appropriate measures to bring such actions into compliance with the requirements of the California  
9 Environmental Quality Act, Public Resources Code Section 21000, *et seq.* ("CEQA").

10                  2.       Respondent shall take the following actions pursuant to Public Resources Code  
11 Section 21168.9(b) to comply with the provisions of CEQA:

12                   a.       Prior to any further approval of the actions or project contemplated by  
13 Board of Supervisors' Resolution 96-810 or 96-811, Respondent shall, pursuant to the requirements of  
14 CEQA:

15                   (i)       Prepare appropriate environmental documentation that complies with  
16 CEQA. Prior to utilizing EIR 564 as the sole environmental documentation for an action or project,  
17 Respondent shall revise or supplement EIR 564 to address the following specific deficiencies identified  
18 by the Court in its Statement of Decision: (1) agricultural impacts; (2) air quality impacts; (3) public  
19 services and facilities impacts; and (4) cumulative impacts; and any other environmental issues or  
20 impacts that may be affected thereby.

21                   (ii)      Circulate the revised or supplemented portions of EIR 564 and respond to  
22 comments regarding agricultural and cumulative impacts, and otherwise comply with each and every  
23 requirement of CEQA with respect to the preparation, processing, consideration and certification of any  
24 such environmental documentation.

25                   b.       Prior to approving any action or project contemplated by Board of  
26 Supervisors' Resolution 96-810 or 96-811, Respondent shall adopt all findings and determinations  
27 required by, and in the manner required by, CEQA.

1 Under Public Resources Code Section 21168.9(b), this Court does not direct Respondent to  
2 exercise its lawful discretion in any particular way.

3 Under Public Resources Code Section 21168.9(b), this Court will retain jurisdiction  
4 over Respondent's proceedings by way of a return to this peremptory writ of mandate until the Court has  
5 determined that Respondent has complied with this Peremptory Writ of Mandate and all of the  
6 provisions of CEQA.

7 Respondent must file a return to this Peremptory Writ of Mandate no later than December 1,  
8 1998.

9 BY ORDER OF THE COURT, WARREN C. CONKLIN, JUDGE OF THE SUPERIOR  
10 COURT, ASSIGNED, THE PEREMPTORY WRIT SHALL BE ISSUED.

11  
12 DATED: MAY 19 1998



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ALAN SLATER, CLERK OF THE  
SUPERIOR COURT  
ORANGE COUNTY, CALIFORNIA  
BY

M. Apodaca  
M. APODACA, DEPUTY CLERK

**RECEIVED**  
MAY 28 1998

**FILED**  
ORANGE COUNTY SUPERIOR COURT

COUNTY COUNSEL'S OFFICE

MAY 19 1998

ALAN SLATER, Executive Officer/Clerk

*M. Apodaca*  
BY M. APODACA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

CITY OF LAKE FOREST; CITY OF  
IRVINE,

Petitioners,

vs.

COUNTY OF ORANGE; ORANGE COUNTY  
BOARD OF SUPERVISORS; and  
DOES I-L, inclusive,

Respondents.

Case No. 772442

JUDGMENT RE PETITION *11011*  
FOR WRIT OF MANDATE *720*

This matter came on for hearing before this Court in Department 1R, the Honorable Warren C. Conklin, Assigned, Judge Presiding, on November 3, 1997, at 10:00 a.m. Christopher G. Caldwell of Hedges & Caldwell appeared for Petitioner City of Lake Forest. Joel D. Kuperberg of Rutan & Tucker LLP appeared for Petitioner City of Irvine. Jack W. Golden, Deputy County Counsel, appeared for Respondent County of Orange (the "County").

The Court has reviewed the administrative record of the County's proceedings in this matter, the briefs submitted by the parties, and the oral arguments of counsel; the matter has been submitted for decision; having issued a Tentative Statement of Decision on November 14, 1997, having considered further pleadings filed by these parties, having issued a Statement of Decision on February 27, 1998 in support of its judgment; and having issued an Order for a judgment consistent with the Court's ruling; and based upon the foregoing and good cause appearing,

1 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

2 1. The Orange County Board of Supervisors is dismissed as a party to this action.

3 2. Judgment is entered in favor of Petitioners City of Lake Forest and City of Irvine and against  
4 Respondent County of Orange on the Fourth, Fifth, Twelfth, and Sixteenth Causes of Action in the  
5 Petition for Writ of Mandate on the grounds as stated in the Statement of Decision. Judgment shall be  
6 entered in favor of Respondent and against petitioners on all other causes of action in the Petition for  
7 Writ of Mandate. The Petitioners claims regarding light and glare and airport safety issues are barred  
8 for failure to allege them in the Petition.

9 3. A peremptory writ of mandate directed to Respondent shall issue under seal of this Court.  
10 ordering Respondent to take those specific actions as may be necessary to bring EIR No. 564 into  
11 compliance with the Statement of Decision and the California Environmental Quality Act ("CEQA").  
12 Pub. Res. Code § 21000, et seq.

13 4. The County of Orange must file a return to the writ no later than December 1, 1998.

14 5. Petitioners City of Lake Forest and City of Irvine shall have and recover their costs of suit  
15 from and against Respondent County of Orange. This Order is without prejudice to prevailing party  
16 issues in the context of consideration of motions for an award of attorneys' fees by any party.

17 6. The Court reserves jurisdiction to determine, upon proper motion, whether any of the parties  
18 are entitled to attorney's fees.

19 7. The Court retains jurisdiction over the return to the writ to determine whether the County of  
20 Orange has taken those actions required to comply with CEQA, the Statement of Decision, this  
21 Judgment and the Peremptory Writ of Mandate.

22  
23 Dated: MAY 19, 1998

24 /s/ WARREN C. CONKLIN

25 WARREN C. CONKLIN  
26 JUDGE OF THE SUPERIOR COURT, ASSIGNED  
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**PROOF OF SERVICE**

I do hereby declare that I am employed in the County of Orange, over 18 years old and that my business address is 10 Civic Center Plaza, 4<sup>th</sup> Floor, Santa Ana, California. I am not a party to the within action.

On June 8 1998, I served the foregoing **NOTICE OF ENTRY OF JUDGMENT** on all other parties to this action by placing a true copy of said document in a sealed envelope in the following manner:

☒ (BY U.S. MAIL) I placed such envelope(s) addressed as shown below for collection and mailing at Santa Ana, California following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☐ (BY AIRBORNE EXPRESS) I placed such envelope(s) addressed as shown below for collection and delivery by Airborne Express with delivery fees paid or provided for in accordance with this office's practice. I am readily familiar with this office's practice for processing correspondence for delivery the following day by Airborne Express.

☐ (BY FACSIMILE) I caused such document to be telefaxed to the addressee(s) and number(s) shown below, wherein such telefax is transmitted that same day in the ordinary course of business.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to the addressee(s) shown below. A proof of service signed by the authorized courier will be filed forthwith.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

  
Sheila Boyle

**NAME AND ADDRESS OF EACH PERSON TO WHOM SERVICE WAS MADE**

Joel Kuperberg, Esq.  
Rutan & Tucker  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626-1950

Christopher Caldwell, Esq.  
Caldwell, Leslie, Newcombe & Petit  
606 South Olvie Street, Suite 500  
Los Angeles, CA 90014-1507

RECEIVED  
MAY 12 1998

SUPERIOR COURT

RECEIVED  
MAY 28 1998

COUNTY COUNSEL'S OFFICE

FILED  
ORANGE COUNTY SUPERIOR COURT

MAY 19 1998

ALAN SLATER, Executive Officer/Clerk  
*M. Apodaca*  
BY M. APODACA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

CITY OF LAKE FOREST; CITY OF  
IRVINE,

Petitioners,

vs.

COUNTY OF ORANGE; ORANGE COUNTY  
BOARD OF SUPERVISORS; and  
DOES I-L, inclusive,

Respondents.

Case No. 772442

ORDER GRANTING PETITION  
FOR WRIT OF MANDATE

This matter came on for hearing before this Court in Department 1R, the Honorable Warren C. Conklin, Assigned, Judge presiding, on November 3, 1997, at 10:00 a.m. Christopher G. Caldwell of Hedges & Caldwell appeared for Petitioner City of Lake Forest. Joel D. Kuperberg of Rutan & Tucker LLP appeared for Petitioner City of Irvine. Jack W. Golden, Deputy County Counsel, appeared for Respondent County of Orange (the "County").

The Court has reviewed the administrative record of the County's proceedings in this matter, the briefs submitted by the parties, and the oral arguments of counsel; the matter has been submitted for decision; and has issued a Tentative Statement of Decision on November 14, 1997, and a Statement of Decision in support of its judgment on February 27, 1998, a copy of which is attached hereto as Exhibit A.

1 The Court finds that Environmental Impact Report (EIR) 564 fails to comply with the provisions  
2 of the California Environmental Quality Act ("CEQA") in the following respects: (1) EIR 564 fails to  
3 adequately disclose the Project's impacts on agricultural land; (2) EIR 564 fails to adequately disclose  
4 the Project's air quality impacts; (3) EIR 564 fails to adequately disclose the Project's public services  
5 and facilities impacts; and (4) EIR 564 fails to adequately disclose the Project's cumulative impacts.

6 IT IS THEREFORE ORDERED as follows:

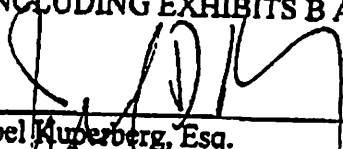
7 1. Judgment shall be entered in the form attached hereto as Exhibit "B", in favor of Petitioners  
8 and against Respondent on the Fourth, Fifth, Twelfth, and Sixteenth Causes of Action in the Petition for  
9 Writ of Mandate on the grounds stated in the Statement of Decision. Judgment shall be entered in favor  
10 of Respondent and against Petitioners on all other causes of action in the Petition for Writ of Mandate.

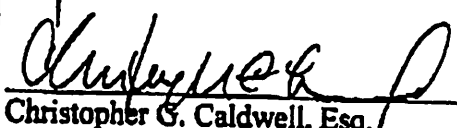
11 2. A peremptory writ of mandate directed to Respondent, in the form attached hereto as Exhibit  
12 "C", shall be issued under seal of this Court, ordering Respondent to take those specific actions as may  
13 be necessary to bring EIR No. 564 into compliance with the statement of Decision and the California  
14 Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000, *et. seq.*

15 DATED: MAY 19, 1998.

16 /s/ WARREN C. CONKLIN  
17 WARREN C. CONKLIN  
18 JUDGE OF THE SUPERIOR COURT, ASSIGNED

19 APPROVED AS TO FORM,  
20 INCLUDING EXHIBITS B AND C:

21   
22 Joel Kuperberg, Esq.  
23 Rutan & Tucker, LLP  
Attorneys for Petitioner CITY OF IRVINE

24  5/6/98.  
25 Christopher G. Caldwell, Esq.  
26 CALDWELL, LESLIE, NEWCOMBE & PETTIT  
27 606 So. Olive Street, Ste. 500  
28 Los Angeles, CA 90014-1507  
Attorneys for Petitioner, CITY OF LAKE FOREST